



DEPARTMENT OF THE NAVY

NORTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
10 INDUSTRIAL HIGHWAY
MAIL STOP, #82
LESTER, PA 19113-2090

N62661.AR 001193
NAVSTA NEWPORT RI
5090 3a

IN REPLY REFER TO

11011
Code 241/SZ
05 March 1999

Mr. Steven M. McInnis, Esq.
38 Bellevue Avenue
Newport, Rhode Island 02840

Dear Mr. McInnis:

This is in response to your letter of February 12, 1999 providing comments relating to the Navy's request for access to the Melville Marine Industries (MMI) property to perform environmental remediation.

In connection with the proposed remediation, the Navy also requires use of a portion of MMI's property located immediately south of the access road between Defense Highway and the Railroad right-of-way, as depicted on the enclosed drawing. This area will be used by the Navy's contractor for siting its office and craft trailers, and for personnel parking. This area will not be used for staging any contaminated material. Accordingly, the proposed Access Agreement has been revised, and a copy is provided for your review. Additionally, our responses to your comments have been incorporated into the Agreement as follows:

1. *Section 1 - Term.* Concur. Clause has been revised to include termination upon the Navy's completion of onsite remediation, restoration of the property, and removal of Navy property from the premises.
2. *Section 4 - Purpose.* Concur. The following provision has been added to the access agreement: "The NAVY shall perform all work as described in the Remedial Action Work Plan 1999."
3. *Section 6 - Inspections.* Concur. RIDEM will be included in the inspections of the property.
4. *Section 9 - Sampling Results.* Concur. Clause has been revised as follows: "The Navy shall provide MMI with copies of all documents generated from the work authorized herein."
5. *Section 10 - Removal of Navy Property.* Concur. Clause has been revised as follows: "All property placed on the premises by the Navy ... shall be removed prior to the expiration of this Agreement."
6. *Section 11 - Permits.* We cannot agree to the performance and indemnification language you propose because it is inconsistent with the Government's limitations pursuant to the federal Anti-Deficiency Act.

Blind copy for:
183/JS, 182/TB, 183/ANK, 02/CG, 04/TG, 241, 241/SZ, 24RF

1661

7. *Section 12 - Insurance.* The following information pertains to your request that all civilian personnel on the site carry adequate public liability and worker's compensation insurance:

Navy Contractors: The following provision has been added to the access agreement: "At all times during the term of this Agreement the Navy's contractors shall maintain, at their own expense, the following insurance for the minimum limits of liability as set forth below:

- (a) Comprehensive General Liability Coverage in the amount of \$500,000.
Automobile Liability: \$200,000 per person;
\$500,000 per occurrence for bodily injury;
\$20,000 per occurrence for property damage.
- (b) Worker's Compensation Insurance as required by law.

Certificates of insurance evidencing the above coverage will be provided to MMI prior to the conduct of any work authorized herein."

Please be advised, since no contractual relationship exists between MMI and the Navy's contractor (i.e. Foster Wheeler), MMI would not be named as an additional insured on their policy. However, Foster Wheeler is agreeable to making MMI a Certificate Holder.

Navy Personnel: The Government is self-insured and does not provide any such insurance policies.

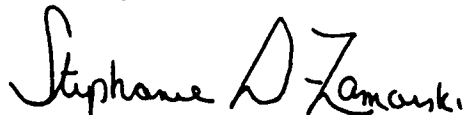
Request for Assurances Regarding Claims: As stated herein, the Government cannot agree to indemnify MMI because it is inconsistent with the Anti-Deficiency Act.

8. *Wetlands Permits.* Concur. The following clause has been added: "Any permits or authorizations received by the Navy from the U.S. Army Corps of Engineers, RIDEM, and CRMC to conduct site remediation and restoration within the wetlands will be consistent with the permits already obtained by MMI."

Upon receipt of your concurrence with the revisions, I will finalize the Access Agreement.

We appreciate your cooperation in this matter. If you have any questions, please call me at (610) 595-0772.

Sincerely,

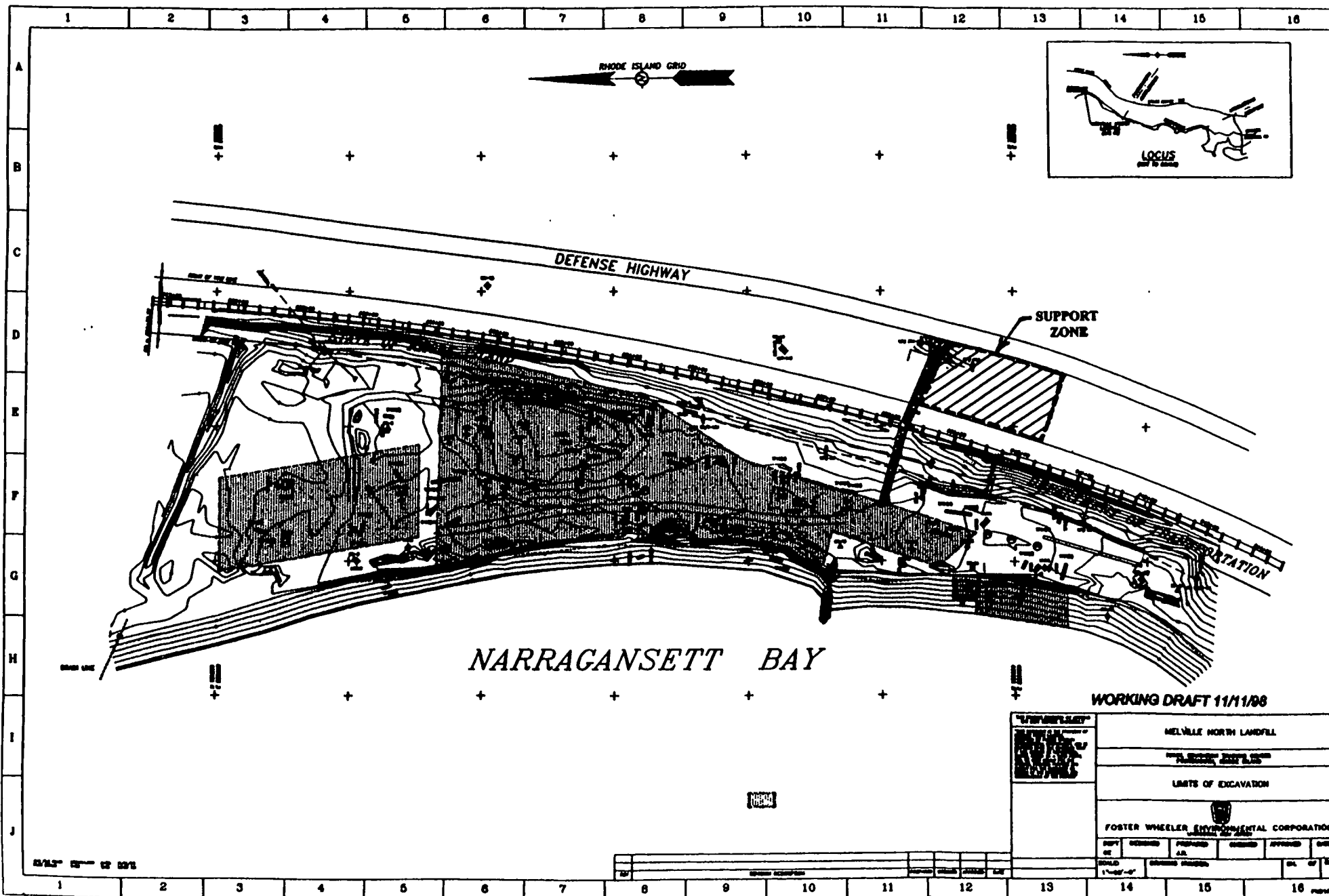


STEPHANIE D. ZAMORSKI
Realty Specialist, Real Estate Division
Real Estate Contracting Officer

Encl: 1. Site Drawing

2. Access Agreement "Draft - 3/5/99"

ENCLOSURE (1)



DRAFT - 3/5/99

NAVY CONTRACT NO.
N62472-99-RP-

**AGREEMENT
BETWEEN
MELVILLE MARINE INDUSTRIES
AND
THE UNITED STATES OF AMERICA**

THIS AGREEMENT is made as of the _____ day of _____, 1999 by and between MELVILLE MARINE INDUSTRIES, hereinafter referred to as "MMI" and THE UNITED STATES OF AMERICA, acting by and through The Department of the Navy, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Mail Stop #82, Lester, Pennsylvania 19113-2090, hereinafter referred to as the "NAVY".

W I T N E S S E T H

WHEREAS, MMI is the owner of certain real property located at the northern end of the Naval Station, Newport, Rhode Island and identified as the Melville North Landfill, situated along the westerly side of the Rhode Island Department of Transportation Railroad Right-of-Way between Station Nos. 628+00 and 641+00, and the parcel of land identified as "Support Zone" (Plat 50 Lot 6) located between Defense Highway and said Railroad Right-of-Way, hereinafter referred to as the "PREMISES". Said PREMISES as delineated on a drawing entitled Melville North Landfill, Limits of Excavation, dated 11/11/98, marked Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the NAVY is conducting remedial actions at the Naval Station and requires access to the PREMISES in order to perform remedial activities at the Melville North Landfill; and

WHEREAS, in order to perform the necessary activities, the NAVY has requested and MMI hereby agrees to provide access;

NOW THEREFORE, in consideration of the mutual promises and in fulfillment of the terms and conditions set forth below, MMI and the NAVY do agree as follows:

1. MMI hereby grants to the NAVY the right to enter upon the PREMISES herein described at any time for a period of one (1) year, effective from the date and year first above written, unless terminated by mutual consent upon completion of the work authorized herein including onsite remediation, restoration, the removal of all Navy property from the PREMISES.

ENCLOSURE (2)

2. This Agreement may be terminated by the NAVY at any time by providing written notification to MMI.

3. All activities will be performed by the NAVY at no cost to MMI.

4. The NAVY shall perform all work as described in the Remedial Action Work Plan 1999. This Agreement provides for use of the PREMISES by the NAVY or its authorized representatives for the following purposes:

- a. The removal and disposal of approximately 40,000 cubic yards of contaminated soil from three areas located on the PREMISES, the furnishing of backfill with clean soils, grading and turf, and related work; and
- b. The collection of surface and subsurface soil samples and the removal of existing monitoring wells.
- c. The portion of the PREMISES identified as "Support Zone" shall be used for the siting of the contractor's office and craft trailers, and for personnel parking. This area will not be used for staging any contaminated material.

5. This AGREEMENT includes the right of ingress and egress for the NAVY and its other authorized representatives to the PREMISES for the purposes described herein. Ingress and egress to the PREMISES shall be accomplished through the use of existing driveways and roadways, whenever possible. Any existing gates will be closed when not in use by the NAVY.

6. All work shall be performed in a safe and proper manner utilizing Rhode Island Department of Environmental Management (RIDEM) reviewed health and safety plans and generally accepted scientific and engineering practices.

7. A joint physical inspection of the PREMISES shall be made both prior to the NAVY's commencement of the work and upon completion of the work authorized herein. Said inspections shall be performed by authorized representatives of MMI, NAVY and RIDEM. The NAVY or its authorized representatives shall schedule the inspections with MMI's representative, _____ at _____.

8. Upon completion of the work described herein, the NAVY or its representatives will restore the PREMISES to as good a condition as existed prior to the access granted herein, or to that condition acceptable to the parties hereto, reasonable wear and tear excepted.

9. The NAVY shall provide MMI with copies of all documents generated from the work authorized herein.

10. All property placed upon the PREMISES by the NAVY shall remain the property of the NAVY and shall be removed prior to the expiration of this Agreement.

11. The NAVY shall be responsible for obtaining all permits required by applicable Federal, State and local laws.

12. The NAVY shall be responsible for all damages to persons or property in accordance with the procedures and limitations of applicable environmental laws and the Federal Tort Claims Act (28 USC §2671 et. seq.).

13. At all times during the term of this Agreement the Navy's contractors shall maintain, at their own expense, the following insurance for the minimum limits of liability as set forth below:

- (a) Comprehensive General Liability Coverage in the amount of \$500,000.
Automobile Liability: \$200,000 per person;
\$500,000 per occurrence for bodily injury;
\$20,000 per occurrence for property damage.
- (b) Worker's Compensation Insurance as required by law.

Certificates of insurance evidencing the above coverage will be provided to MMI prior to the conduct of any work authorized herein.

14. Any permits or authorizations received by the Navy from the U.S. Army Corps of Engineers, RIDEM, and CRMC to conduct site remediation and restoration within the wetlands will be consistent with the permits already obtained by MMI.

15. This Agreement constitutes the entire agreement of the parties hereto and shall supersede all prior negotiations and agreements.

16. No revision of this Agreement shall be valid unless made in writing and signed by MMI and the NAVY.

DRAFT - 3/5/99

IN WITNESS WHEREOF, MMI and the NAVY have caused this Agreement to be effective as of the date and year first above written.

**UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY**

Date

By: _____

MELVILLE MARINE INDUSTRIES

Date

By: _____
Signature

Name & Title

CERTIFICATION BY SECRETARY OR ASSISTANT SECRETARY

[If the Owner is a Corporation, the following certification must be signed by the Secretary or Assistant Secretary.]

I certify that the person who signed this Agreement on behalf of the Owner was then the Officer indicated and this Agreement was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Signature

Name & Title

(CORPORATE SEAL)

